

# AMICE's Response to the European Commission Call for evidence: EU regulatory framework for financial services

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## A. Rules affecting the ability of the economy to finance itself and grow

### Issue 1 | Unnecessary regulatory constraints on financing

*The Commission launched a consultation in July on the impact of the Capital Requirements Regulation on bank financing of the economy. In addition to the feedback provided to that consultation, please identify undue obstacles to the ability of the wider financial sector to finance the economy, with a particular focus on SME financing, long-term innovation and infrastructure projects and climate finance. Where possible, please provide quantitative estimates to support your assessment.*

#### Example 1 for Issue 1 | Unsuitability of regulatory constraints with long term investors' business model provokes an undesirable shift away from equity investments that are key to financing the economy

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC) – Article 105(5) – Equity risk module.
- Solvency II Delegated Regulation (2015/35). Article 169 – Standard equity risk sub-module.

*\* Please provide us with an executive/succinct summary of your example:*

The unsuitability of regulatory constraints with long term investors' business model provokes an undesirable shift away from equity investments which are key to financing the economy.

For insurers, the prudential requirements are an important factor in assessing and comparing potential investments.

Long-term investments as such fit into the business model of mutual and cooperative insurers since their activities tend to have a longer horizon. Not being listed and therefore not under the quarter-by-quarter scrutiny of investors and analysts, the undertakings of our sector commonly have a longer business horizon also in their investments. Therefore, in some markets, mutual insurers actively invest in long-term holdings of equities both listed and unlisted. Our members regard the capital charge under Solvency II for such investments as strongly penalising and certainly not as an incentive to invest more actively in equity.

It is critically important to recall that equity shares, whether listed or unlisted, represent a typical long term asset category at the heart of the functioning of financial markets, supporting economic growth at large.

Solvency II as well as other financial frameworks which are overly focussed on short term market values poses a problem through its short-term approach, which modifies investment behaviour, and the rules on allocations of assets, particularly discouraging investment in shares. It also increases pro-cyclicality. The short term view of the prudential regulatory framework and its calibration give an illusion of security, and make the prediction and understanding of developments in ratios impossible as well as barely relevant.

Furthermore, Solvency II creates inequalities between asset categories, unduly penalising some vehicles such as equity shares, encouraging a regulatory arbitrage in favour of other

asset classes for which the risk of artificial bubbles is growing. This results in unsound risk management.

Financial literature and practical experience show that equity investment pays off in the long run and outperform all other asset classes. In other words, it is sound and safe to invest in an asset class that brings performance and diversification as long as the investor has a long term view and actively manages its portfolio. Additionally, research papers have demonstrated that the volatility of shares decreases with the time horizon of the holding which is not true for other asset classes. In the context of a long term investment horizon equity shares are the best solution to fulfil the prudent person principle based on performance, liquidity and security.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

An important step towards the correction of the short-term bias of Solvency II has been made in Omnibus II. However, not enough attention has been paid to equities in the long-term package. As it stands, the directive discourages investments in equity, even though this category of assets is an essential vehicle for long-term investment and growth within the economy. The first suggestion is to take immediate action towards a revision of the equity calibration.

The calibration needs to take into account the investment time horizon of the investor. In other words, the calibration of the risk should be driven by the duration of the liabilities including free surplus. A reduced shock should be used when free surplus well above capital requirements is available. The argument is that for long term equity investments, short term volatility should not be considered and should lead in turn to a lower capital requirement. The definition of free surplus should be set around own funds of the highest quality and of the longest duration and well above the required solvency capital to demonstrate non submission to forced sales.

The regulatory framework and calibration should value the protection and trust that free surplus provides to insurers that are not affected by short term volatility and not forced to sell at a depreciated price, but rather take opportunities to invest and disinvest in a countercyclical way. The solvency strength of well capitalized investors is a paramount source of stability for the economy as well as for the customers/insured. It is a clear guarantee of security appreciated by clients as well as a reason for investing long term and benefiting from the outperformance that it entails. This financial performance will in turn benefit the client (through better rewarded life & pensions products and improved competitiveness in P&C tariffs).

Long term investors manage their equity investment with a long term view and base their selection of shares on long term intrinsic value drivers. They fulfil their role in market financing and in the economy by actively managing their shares for real value, disinvesting when overvalued and investing when undervalued. This enhances competition in economic sectors and between undertakings issuing shares and offers countercyclical behaviour to volatility and economic cycles.

The calibration of market risks should be reviewed as foreseen in recital 150 of the Delegated Acts, by taking into account the business model, time horizon and robustness of the investing insurance and reinsurance undertaking. The prudential costs of these provisions should not be excessive but rather well-calibrated and providing a fair treatment between the different asset classes.

## Example 2 for Issue 1 | Insurer's Business Model

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC) – Article 101(2) Calculation of the Solvency Capital Requirement.

*\* Please provide us with an executive/succinct summary of your example:*

According to Article 101, section 2 of the Solvency II Directive, the Solvency Capital Requirements have to be calculated under the assumption that the company will continue its business as a going concern. Going concern means that the entity continues its operations. This assumption is crucial when determining the best estimate of insurance liabilities, when assessing the effectiveness of future management actions, the ability to pay out future discretionary participations features, etc.

The business model of an insurer also reflects the going concern assumption and the time horizon. Various investments are actually matched with the insurance liabilities by means of ALM studies. These studies assess which investments are needed to obtain the cash flows needed as pay-out in respect of the insurance contract between insurer and policyholder. This long term perspective implies that the focus of the insurer is on the returns, the actual reliability of the cash flow patterns of the investments and the default risk. The insurer is normally not concerned with intermediate movements in the market value as most investments are made for the longer term. For example, value changes due to spread changes do not affect the actual cash flows received. In an economic sense, any unrealised gain (or loss) will be recycled as future unrealised loss (or gain). This is under the assumption that a forced sale can be avoided in the future.

However, when assessing the scenarios used to calculate the spread risk, the angle changes from the long term to the short term. The scenarios used for calculating the capital requirements assume an instantaneous reduction in the economic value caused by the widening of spreads (based on the credit quality step and duration). This calculation is not connected with the actual policy of an insurer regarding the financial instruments on the balance sheet or the ALM policy.

The spread risk formula and methodology is detrimental for insurers which have longer term strategies for holding financial instruments. For example, the investment in infrastructure will always cause a very large capital requirement because of the spread risk - even though the capital requirements for infrastructure have been lowered - while the dominant risk for an insurer is actually the counterparty default risk. An insurer willing to invest in assets to be held over the long term does so because such assets help in the diversification of its investment policies which are needed to obtain the necessary cash flows to meet the obligations following the insurance obligations.

If the market risk in general, and the spread risk module in particular, were more receptive to the insurer's business model, controversial issues regarding the application of the volatility adjustment and the matching adjustment, the capital requirements for government bonds, the equity dampener and the calibration of equity risk would be solved more easily.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

A possible solution is, mirroring the approach used within the banking legislation, to distinguish between a portfolio of investments used for replicating the insurance obligations (based on ALM studies) and a portfolio for returns; in banking “bank book” versus “trading book”. For the former, an approach regarding the default risk and liquidity risk would be appropriate, while for the latter the current approach is valid.

Although a one-year time horizon for risk consideration fits the one-year statutory accounts exercise and can be justified for prudential purposes, this horizon as well as the level of prudence set in Solvency II (one-year horizon and 99.5% value at risk) should not be considered in isolation of the business model and risk management practices of the undertaking concerned. Risk calibration should therefore be set using proper criteria taking into account the undertaking’s actual exposure to the one-year shock. This can only be achieved through proper reflection of the way the business model and risk management system of the undertaking responds to the shock. Failing to do so completely misses the point and provides the wrong information and incentives. Risk calibration should be based on a total balance sheet approach (assets and liabilities) and on a going concern approach showing how business models and risk management systems act as volatility absorbers.

## Issue 2 | Market liquidity

*Please specify whether, and to what extent, the regulatory framework has had any major positive or negative impacts on market liquidity. Please elaborate on the relative significance of such impact in comparison with the impact caused by macroeconomic or other underlying factors.*

### Example 1 for Issue 2 | Liquidity is restrained when long term assets such as equities are regulated with a pro-cyclical short term view

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC) – Article 105(5) Equity risk module.
- Solvency II Delegated Regulation (2015/35) – Article 169 Standard equity risk sub-module.

*\* Please provide us with an executive/succinct summary of your example:*

AMICE’s members, and more generally all insurers with a long term business model – see details in suggestions under Issue 1 Example 1 - manage their equity investment with a long term view and base their selection of shares on long term intrinsic value drivers. They fulfil their role in market financing and in the economy by actively managing their shares for real value, disinvesting when overvalued and investing when undervalued. This enhances competition in economic sectors and between undertakings issuing shares and offers counter-cyclicality to volatility and economic cycles which improves liquidity.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

See Example 1 of Issue 1.

### Issue 3 | Investor and consumer protection

*Please specify whether, and to what extent, the regulatory framework has had any major positive or negative impacts on investor and consumer protection and confidence.*

**Example 1 for Issue 3 | Consumer protection is not well served through excessive prudential requirements which are inadequately calibrated with the reality of the risks undertakings are exposed to**

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC).
- Solvency II Delegated Regulation (2015/35).

*\* Please provide us with an executive/succinct summary of your example:*

Consumer protection is not well served by the wrong calibration of the level of risks of the different asset classes, providing wrong incentives and a misalignment of management decisions with performance and true risk. Indeed, not recognizing the performance and lower risk of equities as an asset class when held for a long term is in contradiction with robust studies demonstrating that equities outperform all other asset classes in the long run with less volatility on a long time horizon. This is key to understanding the key role equities play in the contribution of an investor performance, the diversification of its risks and the important role it plays in the economy and its growth. It is a transparent class of asset (no sophistication with hidden risks) at the heart of the funding of the private competitive sector with a transparent pricing establishment process.

Consumers' interests are not well served by the insufficient appreciation of the sustainability of an insurer that holds important levels of own funds well above the capital requirements. Such an insurer is definitely not submitted to short term volatility and the risk it is facing should be calibrated in accordance with its investment time horizon. Significant levels of free surplus play a key role in setting the time horizon of the insurance undertaking's investments.

The regulatory framework and calibration should value the protection and trust that free surplus provides to insurers that are not affected by short term volatility and not forced to sell at a depreciated price, but rather take opportunities to invest and disinvest in a countercyclical way. The solvency strength of well capitalized investors is a paramount source of stability for the economy as well as a true source of protection for the customers/insured. Investing long term and benefiting from the outperformance that it entails brings a financial performance that will in turn benefit the client (through better rewarded life & pensions products and improvements to the competitiveness of P&C tariffs).

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

See Example 1 of Issue 1.

### Example 2 for Issue 3 | The increased complexity of EU regulatory requirements concerning conduct of business of insurers would not result in better consumer and investor protection

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC.
- Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).
- Solvency II Directive 2009/138/EC.
- Insurance Distribution Directive.
- Anti-money laundering Directive 2015/849.
- EIOPA Guidelines, Opinions, Regulatory and Implementing Technical Standards in the field of consumer protection: EIOPA Preparatory guidelines on product oversight and governance arrangements, Technical Advice on Conflicts of interest in direct and intermediated sales of insurance-based investment products.

*\* Please provide us with an executive/succinct summary of your example:*

AMICE members are concerned about the increased complexity of new rules, reflected in the quantity of new legislation adopted in recent years, the detail and number of layers of regulation and supervision with requirements at international, European and national level. The national implementing provisions may barely be in effect, when shortly afterwards a new European text is already in preparation without any prior impact assessment having been carried out on the need to adopt a new piece of legislation.

This poses difficulties of coordination between these EU regulations and domestic laws. Furthermore, these EU rules are often added to an existing regulation in national law.

These regulations require insurance undertakings to adapt, update or create new internal procedures. This represents additional costs which are ultimately passed on to the consumer.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

The implementation of EIOPA guidelines on product oversight and governance arrangements (POG) is a good example of the willingness of institutions to create new standards with the pretext of improving consumer protection. EIOPA launched a consultation in late 2014 on that subject even though discussions on the IDD were ongoing. A second consultation was launched again in October 2015 on the issue without waiting for the level 2 measures work to begin under the Insurance Distribution Directive.

In order to avoid inconsistencies and overlapping between the level 2 and level 3 measures, AMICE members believe that this initiative by EIOPA is untimely and that EIOPA should wait for the implementation of the IDD and until the IDD delegated acts on product oversight

and governance arrangements are completed. It is therefore inappropriate at this moment to introduce such preparatory guidelines.

It is also important to ensure that the industry is given sufficient time to implement these guidelines given the fact that it will entail organisational costs and the review and adaptation of IT systems.

In addition, EIOPA consultation on conflicts of interest in the sales of insurance-based investment products is another example of the willingness of the European supervisory authorities to adopt prescriptive rules in the absence of a level 1 measure. The IDD empowers the Commission to adopt level 2 delegated acts in the area of management of conflicts of interest (Articles 27 and 28 of IDD). But EIOPA has already consulted on the subject in May and October 2014 while the draft IDD was still being discussed within the European institutions.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

It is important to ensure that the industry is given sufficient time to implement the regulatory changes given the fact that it will entail organisational costs and the review and adaptation of IT systems. A comprehensive and thorough assessment of the rules seems essential before attempting new reforms in order to assess the consumer interest and the additional cost it could create.

AMICE supports the recommendation made by the European Parliament in its Resolution adopted on 19 January 2016 according to which legislation is not always the most appropriate policy response and that non-legislative and market-based approaches should be duly taken into account.

## Issue 4 | Proportionality/preserving diversity in the EU financial sector

*Are EU rules adequately suited to the diversity of financial institutions in the EU? Are these rules adapted to the emergence of new business models and the participation of non-financial actors in the market place? Is further adaptation needed and justified from a risk perspective? If so, which, and how?*

### Example 1 for Issue 4 | Specificities of the insurance and mutual sector should be taken into consideration

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC).

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

#### Insurance companies are not banks

Following the financial crisis, a significant number of reforms have been introduced by international, European and national policymakers as a response to problems in the banking sector without sufficient tailoring.

Banks and insurance companies need differentiated and specific regulatory frameworks that fully reflect the profound differences between the business models and risk profiles of the two industries.

Long-term investors should be regulated according to their long-term business model, recognising their ability to match assets and liabilities and to invest in liquid as well as less liquid assets. Their capacity to outlive short term volatility should be understood and taken into account, even more because it also represents a source of investment opportunity to them contrary to a risk.

This would enable the insurance sector to offer reasonable products and provide safety to future pensioners rather than shifting the entire risk on them.

#### Specificities of mutual Insurers are not taken into account

It is regrettable that European financial services' legislation is mainly adapted to the business model of joint stock companies. It may be noted that the mutual form is not always taken into account in the European and/or national set of rules. For example, in Belgium the "fit and proper" requirements applicable to Board members do not take due account of the specificities of mutual companies and of their democratic way of electing Board members.

In AMICE's European Mutual Insurance Manifesto of 2014, we present how mutual and cooperative insurers contribute positively to the insurance market and why their business model is beneficial for European citizens:

- due to their special ownership structure they can focus on their policyholders' needs - they are exclusively owned by their customers and do not have to pay dividends to shareholders;
- they can afford a longer business horizon and therefore pursue longer-term and sustainable strategies;
- their different business model provides diversity in the markets and enhances competition;
- and diversity also enhances the spreading of risk and the stability of financial markets.

#### Reference documents:

- AMICE, [The European Mutual Insurance Manifesto 2014](#)

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

The diversity of business models should be reflected in regulation and supervision while fully taking into account the nature, size and complexities of the entities under consideration and provided that the principles of fair competition and effective supervision are fulfilled.

We invite the Commission and the European co-legislators to ensure that rules and regulations relevant to the insurance sector take into consideration the needs and specificities of mutual and cooperative insurers. In this regard, EU policymakers must:

- recognize that they have to be mindful of the mutual and cooperative sector when making rules and regulations;
- reflect the "mutual and cooperative difference" when new laws and regulations are proposed.

The regulatory framework should value the model of insurers with solvency robustness

demonstrated by high levels of free surplus, together with their long term view which is vital to the economy, its growth and sustainability. Suggestions for amendments to the Solvency II Delegated regulation are presented in Example 1 of Issue 1.

### Example 2 for Issue 4 | Calibration assistance and medical expenses

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Delegated Regulation (2015/35) – Annex II.

*\* Please provide us with an executive/succinct summary of your example:*

When launching the Non-Life and non-SLT Health data request to review the calibration, EIOPA pointed out that the soundness of the calibration of a capital charge depends on the quality and amount of the data available.

The different reports which were discussed at the EIOPA JWG Working Group noted that the data for **assistance** was scarce and not representative enough to be used as a basis for a European calibration. The calculations produced a set of widely dispersed results as data collected was insufficient to perform a reliable re-calibration, needing a good coverage to provide sound results. EIOPA also acknowledged in its report that the volatility factors for premium and reserve risks are typically impacted by the size of the portfolio (an increasing portfolio size decreases its volatility). The low number of very small portfolios in the sample used for the assistance calibration led to a very poor representativeness, on top of the non-conclusive data of the low quality sample.

For the **medical expenses** line of business, EIOPA carried out a similar calibration exercise as for all the other lines of business from the non-life underwriting risk module. However, as a result of the recalibration study the factors were increased in such a manner that those insurers selling medical expenses were requested to maintain higher capital requirements than actually needed (see [EIOPA JWG Working Group Report.pdf](#)).

In several Member States the additional capital for medical expenses is also subject to political and public discussions.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

Private or voluntary health insurance represents a partial or complete alternative to health cover provided by the social security systems. Given the social impact of health insurance, it is an essential issue.

The medical expenses LoB is normally subject to the related legislation of each Member State. A convergent view is almost impossible as the systems and financing of health insurance diverges amongst the European Member States. The calibration exercise suggests that there is actually a “one-size fits all” approach for medical expenses. Health insurers do not regard the standard formula as appropriate.

The capital requirement within the Standard Formula for medical expenses is calculated by means of the sum of a volume factor times a pre-defined factor (alpha and beta) times 3. This basically assumes that over a time horizon of 12 months the costs can rise indefinitely (without any restrictions). However, health insurers generally do not give money upfront to

policyholders. Policyholders who need health care, and who are insured, have to consume the health care first; the invoice is then directly or indirectly sent to the insurer. Thus, the claims are actually based on the actual care made available to a policyholder. The total available health care in a country is limited to the number of hospitals, the number of health care professionals, etc. It is not possible to build and operate a hospital within one year (the perspective of the SCR, VaR over a time horizon with 12 months). Assessing the current status of health care in Europe there is no under-performance, and in certain countries there are even waiting lists. The actual possible increase in the claim amounts is therefore limited.

Both elements result in capital requirements which are too high, which result in too much capital being maintained on the balance sheets of health insurers. This again has several consequences:

- New investors are less likely to invest in health insurers;
- Health insurers have less capital available to invest in new health care initiatives, which again could spark growth of new business and technology.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

A review of the assistance calibration needs to be immediately undertaken. The Solvency II Delegated Acts' review clause reinforces the need to ensure that Solvency II calibration is fine tuned. If not corrected, the standard formula will misrepresent true levels of risks and firms specialised in assistance will be forced to hold significant levels of capitals or will be obliged to move to an undertaking specific parameter or internal model approach in order to more accurately reflect the risks inherent in this line of business. The quality and representativeness could easily be achieved through a new call for data to which the industry could respond rapidly.

EIOPA also acknowledged in its report that the volatility factors for premium and reserve risks are typically impacted by the size of the portfolio (an increasing portfolio size decreases its volatility). Since only few very small portfolios (with an average size of only €15 Million, whereas a big player can reach several hundred million euros of gross earned premiums) were part of the sample used for the assistance calibration, a very poor representativeness has been achieved on top of the non-conclusive data of the low quality sample.

### Example 3 for Issue 4 | Proportionality and Simplifications

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC) Article 29(3) and Article 254.
- Solvency II Delegated Regulation (2015/35/EC) Article 56 – Proportionality.
- EIOPA guidelines on methods for determining the market shares for reporting (EIOPA-BoS-15/106 EN).

*\* Please provide us with an executive/succinct summary of your example:*

The mutual and cooperative insurance sector is mainly composed of small and medium-sized companies. Proportionality has always been a paramount political demand of AMICE. The principle of proportionality is an overarching principle of the Solvency II framework.

According to this principle, regulations should not go beyond what is necessary to achieve, satisfactorily, the objectives which have been set. We acknowledge and welcome the inclusion of elements of proportionality in the Solvency II framework. The provisions that allow Member States to exempt smaller undertakings from quarterly reporting are particularly important. Notwithstanding this achievement, most national supervisors have ignored so far the proposed application thresholds (in terms of the market share covered) and only a handful of Member States apply the exemption.

#### 20% Exemption Threshold from Quarterly Reporting

EIOPA issued Guidelines on how to determine the market shares for limited regular reporting so that undertakings that do not represent more than 20 % of a Member State's life and non-life insurance or of its reinsurance market can be exempted. To calculate the market share, EIOPA focused on the type of business, i.e. life and non-life business, rather than relying on the authorisation given to undertakings, i.e. life insurance or non-life insurance authorisation. These thresholds have been translated at national level into a balance sheet size measure in order to ease its readability by the market. In France for example, the thresholds applied are the following:

- Threshold for Life Business: 8 billion euros Balance Sheet;
- Threshold for Non-Life Business: 0.5 billion euros Balance Sheet;
- Threshold for Reinsurance Business: 4 billion euros Balance Sheet.

Small and medium sized undertakings issuing long-term non-life business cannot benefit from the exemption due to the magnitude of their technical provisions. Qualitative criteria should therefore be taken into account to ensure that all small firms benefit from the exemption.

#### Simplifications in Technical Provisions and SCR

We acknowledge that the Delegated Regulation and the EIOPA Guidelines include a wide range of simplifications. There are additional simplifications which could minimize the burden on undertakings (see below).

#### Thresholds

The Delegated Regulation should introduce some fixed thresholds or cut-off points that would help the implementation of the proportionality or materiality principle.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

#### Examples

Areas where further simplifications should be provided:

1. **Loss-absorbing capacity of deferred taxes** (Delegated Acts – Article 206): We would like to propose a simplification in the calculation by introducing the formula below:

$$Adj\_DT = \min(DTL - DTA + \text{tax on future profits}; t * (BSCR + SCR\_op + Adj\_TP))$$

Where

DTA – denotes the value for deferred tax assets included in the solvency II balance sheet.

DTL – denotes the value for deferred tax liabilities included in the solvency II

balance sheet.

“t” – denotes the average profit tax rate for undertakings.

2. **Technical provisions:** AMICE had submitted a list of possible simplifications to be added to the EIOPA Guidelines for the calculation of technical provisions. This document together with the CEIOPS Paper on Proxies and Simplifications (2008) could be part of a best practice document.
3. **Fire sub-module** (Delegated Acts – Article 132): the fire sub-module requires undertakings to identify buildings within a 200 metre radius. In some major markets, over 50% of the undertakings do not have this information. We suggest an alternative approach by which undertakings would consider their 5 largest exposures.
4. **Non-life lapse risk sub-module** (Delegated Acts – Article 118): In most firms this risk is not material and it is very burdensome to compute. Firms should be allowed not to compute this risk provided it is not material.
5. **Look-through** (Delegated Acts – Article 84(3)): When the risks of the underlying assets of collective investment undertakings and other investments packaged as funds can reasonably be captured at an aggregated underlying level under the 20% threshold according to Article 84(3) of the Delegated Acts, the reporting requirements should be proportionate to this approach and they should not go beyond what it is needed for the computation of the risks. However, even though EIOPA confirmed that a full look-through (on a line-by-line basis) is not to be required for Pillar III, the template ‘S.06.03’ in the reporting package, which lists details of individual holdings in collective investment funds, requires a look-through approach on the basis of the asset category, geographical exposure and currency exposure for each investment fund. This is not aligned with the look through methodology applied in the SCR calculation when based on data groupings determined by the undertakings. We request the non-submission of ‘S.06.03’ for collective investment undertakings when representing less than 20% of the total value of assets and submitted to ad hoc data groupings for the calculation of their market capital charge.
6. **Unavoidable market risk** (Delegated Acts – Article 38): The unavoidable (residual) market risk module should be dealt with in Pillar II. Paragraph 1(i)(ii) from article 38 of the Delegated Acts should be removed.
7. **Mass accident risk sub-module** (Delegated Acts – Article 161): **When** calculating the capital requirements for the mass accident risk, the ratio of persons affected by the mass accident per country should be used as defined in Annex XVI. Five event types are also defined as a result of the accident in Annex XVI with the ratio of persons (out of the persons affected) who will receive benefits for each event type. For each event type the benefits payable by the insurance company should also be defined. The value of the benefits shall be based on the maximum benefits obtainable under the contract (which is/are consistent with the event). For medical expense insurance obligations, the value of the benefits shall be based on an estimate of the average amounts paid in case of event. Some simplifications are needed where this amount is difficult to compute for some very specific supplementary health insurance cover due to the nature of its insurance obligations and guarantees.

Areas where a materiality threshold should be introduced:

1. **Data quality:** Solvency II Delegated Regulation (2015/35) Article 19 – Article 21 data quality.

2. **Written policies:** In line with the principles of proportionality and materiality, we suggest limiting the implementation of the documentation requirements to the written policies mentioned in the Directive i.e. internal audit, internal control, outsourcing, risk management and reporting.

Exemption from the quarterly reporting:

1. Additional qualitative criteria should therefore be taken into account so that the **application of proportionality** is not arbitrary and all SMEs can benefit from it.

**Example 4 for Issue 4 | ECB regulation**

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- ECB regulation on statistical reporting requirements for insurance corporations (ECB/2014/50).

*\* Please provide us with an executive/succinct summary of your example:*

The ECB aligned with the Solvency II rules so that National Supervisory Authorities could exempt 20% of their market from the quarterly reporting (calculated by gross written premiums (non-life) and gross technical provisions (life)) because of proportionality reasons.

This exemption, which was introduced in Omnibus II, was the result of discussions among the trilogue parties (European Commission, European Parliament and Council of the EU) and denoted the willingness of the legislators to alleviate the burden of small undertakings taking into account their nature, size and complexity.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

The ECB will request 80% of the market to submit quarterly information (unless national Solvency II reporting requirements address a larger part of that market) and 95% of the market to submit the annual information. The ECB will reassess by 2020 whether there is a need to request higher market coverage.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

The Solvency II Directive does not contain many elements of proportionality. The EC should ensure that the 20% exemption for quarterly reporting is maintained beyond 2020.

**Example 5 for Issue 4 | Non-life premium and reserve risk sub-module**

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Delegated Regulation (2015/35) Article 115 – Non-life premium and reserve risk sub-module.

\* Please provide us with an executive/succinct summary of your example:

For premium and reserve risk, the parameter used to approximate the 99.5% quantile is equal to 3 which reflects the 99.5% quantile of lognormal distributions. This is not consistent with the underlying distribution used to calibrate the standard deviation for premium and reserve risk.

\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

The capital requirement for the combined premium risk and reserve risk was computed as follows:

$$\rho(\sigma) = \frac{\exp(N_{0.995} \cdot \sqrt{\log(\sigma^2 + 1)})}{\sqrt{\sigma^2 + 1}}$$

$N_{0.995}$  = 99.5% quantile of the standard normal distribution

$\sigma$  = Combined standard deviation for non-life premium and reserve risk

The formula above has been replaced by the following proxy:

$$NL_{pr} = 3 \cdot \sigma \cdot V$$

where

V = Volume measure

$\sigma$  = Combined standard deviation for non-life premium and reserve risk

We propose by default the exact formula and the proxy as a fall back method.

## B. Unnecessary regulatory burdens

### Issue 5 | Excessive compliance costs and complexity

*In response to some of the practices seen in the run-up to the crisis, EU rules have necessarily become more prescriptive. This will help to ensure that firms are held to account, but it can also increase costs and complexity, and weaken a sense of individual responsibility. Please identify and justify such burdens that, in your view, do not meet the objectives set out above efficiently and effectively. Please provide quantitative estimates to support your assessment and distinguish between direct and indirect impacts, and between one-off and recurring costs. Please identify areas where they could be simplified, to achieve more efficiently the intended regulatory objective.*

#### Example 1 for Issue 5 | Professional requirements under IDD are likely to result in additional costs and burden

\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)

- Insurance Distribution Directive.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

Mutual insurers and cooperative insurance companies are confronted with real challenges in maintaining and developing their activities under an umbrella of legal certainty. It appears that the competition authorities (European Commission, DG Competition, but also national competition authorities), within the framework of their missions, are led to control insurance companies on the distribution side of insurance contracts. However, national supervisory authorities are also called upon to control the distribution component of insurance contracts. Positions between these authorities are not consistent and this leads to injunctions from different authorities to control the same theme resulting in inconsistent or even contradictory approaches.

The new regime under the Insurance Distribution Directive establishes stricter and more specific professional requirements. EU Member States will have to establish and publish mechanisms to effectively control and assess the knowledge and competence of insurance and reinsurance intermediaries and employees of insurance and reinsurance undertakings and employees of insurance intermediaries. This should be based on at least 15 hours of professional training or development per year, taking into account the nature of the products sold, the type of distributor, the role they perform and the activity carried out within the insurance or reinsurance distributor. These professional requirements are likely to result in additional burden and costs, without bringing any added value to consumers, and lead to a focus on quantity over quality.

### Example 2 for Issue 5 | IBER

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Commission Regulation (EU) No 267/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector (IBER).

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

In view of the ongoing review of the Commission Regulation (EU) No 267/2010 (IBER), AMICE members consider that the current IBER enhances competition in the insurance sector. A full renewal of the current regime is crucial both for (re)insurers and consumers in Europe.

There are several potential risks should the Commission decide not to renew the IBER:

- An increase of compliance costs and administrative burden on (re)insurers which will be required to self-assess that the arrangements comply with competition rules;
- A reduced knowledge of the risks;
- An increase in the pricing of insurance products;
- A limitation or elimination of insurance offers on some specific risks;

- A considerable decrease in customer choice and supply diversity;
- A decrease of the number of stakeholders (particularly small and medium enterprises) and consequently of competition.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

AMICE members call for a renewal of the current exemptions for joint compilations, tables and studies as well as pools.

### Example 3 for Issue 5 | Costs of Reporting Ratings / CQS

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Omnibus II Directive (2014/51/EU)
  - Article 13 (40) Definitions;
  - Article 109 (a) Harmonised technical inputs to standard formula;
  - Article 111 (n) Delegated acts and regulatory and implementing technical standards concerning Articles 103 to 109.
- Solvency II Directive (2009/138/EC) – Article 44 4(a) Risk Management.
- Solvency II Delegated Regulation (2015/35) – Article 4 General requirements on the use of credit assessments.
- EIOPA guideline on reporting and public disclosure (EIOPA-BoS-15/109 EN).
- ITS on regular supervisory reporting (EIOPA-BoS-15/115).
- ITS on solvency and financial condition report (EIOPA-BoS-15/118).

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

During the public consultation on the EIOPA reporting package, AMICE highlighted the costs of keeping the ratings in the assets templates. We informed EIOPA that, in specific situations, in particular regarding small and medium undertakings, this information would only be collected for the purposes of reporting which would carry a non-proportional burden for those undertakings. In our comments to EIOPA we indicated that to access the rating of the ECAs, all firms reporting under Solvency would be required to buy licenses from the ECAs.

We also explained the process followed by rating agencies: the issuer pays to be rated, the client (an asset manager for example) pays to view the rating and the end user pays (insurance undertaking subject to Solvency II) to store and download the data. Moreover, the fact that not a single ECAI registered in the EU is able to provide all the necessary data, and the fact that the contracts with ECAs do not allow some securities to be supplied by one provider (i.e. S&P) and other securities by another provider (i.e. Moody's) results in the

need to contract with more than one ECAI and to use the larger ones (S&P, Moody's and Fitch). The total cost of the contracts to cover all the securities for which an ECAI is needed is huge (e.g. the cost of an ECAI subscription amounts to 50,000-65,000 euro per year for a small insurance undertaking with less than 500 asset lines).

During the preparatory phase some firms had chosen the information provided by their asset managers, and for which an audit trail exists, to avoid having to pay additional charges. This meant that in the asset-by-asset reporting template (S.06.02 a), the column "nominated ECAI" could not be filled in. The asset manager had the data but could not simply circulate it to his client – the insurance company - unless the firm paid a new subscription to the rating agency.

EIOPA duly considered this issue and developed an additional impact assessment policy on it (see [EIOPA-BoS-15-115 Final report ITS Regular Supervisory Reporting.pdf](#)).

EIOPA decided to allow national supervisory authorities to exempt firms from reporting the information regarding the External rating and Nominated ECAI in templates S.06.02 and S.08.02 where the insurance and reinsurance undertakings have in place investment outsourcing arrangements that lead to this information not being available directly by the undertaking; by using their powers under article 35 (6) and (7) of the Directive 2009/138/EC.

EIOPA underlined that if such a function were outsourced it should be considered as a critical or important function and the requirement regarding outsourcing foreseen in Solvency II should be applied; In addition, in the cases where undertakings have in place an outsourcing agreement that led to the limitation (no reporting), undertakings should explain in the Regular Supervisory Report the procedures implemented by the undertaking to oversee and safeguard the compliance of the requirements in the referred area and how it is guaranteed that all relevant information underlying the investment portfolio is taken into account in the risk management.

It should be recalled that Article 109a of the Omnibus II Directive requires the allocation of the assessments from rating agencies (credit assessments of external credit assessment institutions (ECAIs) to an objective scale of credit quality steps (0 to 6).

For the 2016 contracts proposed by the three main rating agencies (Standard & Poors, Moody's and Fitch) to asset managers, the terms indicate that the use and provision to their (mutual) insurer customers of the credit quality steps (CQS) by the asset managers constitutes a derived use of the rating agencies' primary data and should therefore be subject to a new subscription. The rating agencies also require the asset managers to provide a list of their clients in order to check whether those clients have a direct contract with the rating agency in order to invoice them directly if they do not. Since the contracts state that ratings will not be provided if all clauses are not accepted, the asset managers are obliged to accept the terms and will pass on the extra costs to their (mutual) insurer clients.

From the evidence currently to hand, this problem has already occurred in France and the UK since these two countries are further ahead in their reporting cycle but may also occur elsewhere. This extra cost imposed by credit rating agencies on insurers, especially small and medium sized ones for whom their fees constitute a higher proportion, is surely an unintended consequence of the Solvency II regime, increasing costs to customers without any increased reduction in risk.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

The Solvency Capital Requirement (Standard Formula) calculation relies heavily on the ratings (ECAIs) provided by the rating agencies. The reference to ECAIs in the Omnibus II

text and in the Delegated Acts reinforces the monopoly of the Big Three “Credit rating Agencies” Moody’s, Standard & Poor’s and Fitch Ratings.

In the short term, we propose that EIOPA introduces a process for the validation of Credit Quality Steps (CQS) which would allow market players (asset managers and (mutual) insurers) to avoid supplementary subscriptions with credit rating agencies. The reliance on credit rating agencies should be re-examined in the review of the Solvency II Directive.

#### Example 4 for Issue 5 | Supervisory review process/external audit

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC) - Article 36 Supervisory Review Process.
- EIOPA’s note on the Need for high quality public disclosure: Solvency II report on SFCR and the potential role of external audit.
- Solvency II Delegated Regulation (2015/35) - Article 325 Supervisory Reporting.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

The role of external auditor might overlap with the duties of the supervisory authorities when conducting the Supervisory Review Process (SRP) according to Article 36 paragraph 2 from the Level 1 text. The conduct of the SRP by the supervisory authorities should not be delegated. The requirement to audit the undertaking’s balance sheet and the solvency capital requirements would require a discussion with the auditors about actuarial methods and actuarial assumptions used in the calculation of technical provisions, the use of simplifications, the loss absorbing capacity of technical provisions and deferred assets and the SCR computation using either the standard formula or an internal model, tasks that only concern the supervisory authority.

Any sort of external scrutiny and audit should be a choice for the undertakings and not an obligation. A mandatory audit would be extremely costly for the undertakings, particularly for small and medium size undertakings.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

The supervisory review process cannot be delegated. The reporting deadlines stated in article 325 did not take into account the time needed to conduct an external audit. The deadlines will have to be extended for those undertakings which choose to conduct an external audit on any information to be publicly disclosed.

#### Example 5 for Issue 5 | Length Approval Process USP, AOF

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Implementing Regulation (EU) 2015/498 – Undertaking Specific Parameters.
- Implementing Regulation (EU) 2015/499 – Ancillary Own Funds.

*\* Please provide us with an executive/succinct summary of your example:*

EIOPA requests a period of 6 months to obtain approval for undertaking specific parameters (USPs) and ancillary own funds (AOF). The application should be approved within 3 months of the receipt of the complete application. The USP approval process, for example, should not involve a similar level of workload to the approval of an internal model. An analysis of the technicalities involved in the methodologies requires so much time even though only standardised methods are allowed.

EIOPA also allows national supervisory authorities to extend the consideration period despite the fact that the approval process is limited to data quality checking and to an assessment of the appropriateness of the methods applied to capture risks.

With regards to ancillary own funds, the regulators should bear in mind that the timescales by which the ancillary own fund items might be required can be very short. These funds can be required when an undertaking breaches the SCR, during stress periods and as part of the recovery plan required by the supervisor authority which will most of time be on a 9 months' time frame. In times of stress, the approval period for ancillary own funds should be shortened to 2 weeks.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

It is paramount that the approval period for ancillary own funds is shortened to two weeks particularly in stressed conditions.

## Issue 6 | Reporting and disclosure obligations

*The EU has put in place a range of rules designed to increase transparency and provide more information to regulators, investors and the public in general. The information contained in these requirements is necessary to improve oversight and confidence and will ultimately improve the functioning of markets. In some areas, however, the same or similar information may be required to be reported more than once, or requirements may result in information reported in a way which is not useful to provide effective oversight or added value for investors.*

*Please identify the reporting provisions, either publicly or to supervisory authorities, which in your view either do not meet sufficiently the objectives above or where streamlining/clarifying the obligations would improve quality, effectiveness and coherence. If applicable, please provide specific proposals.*

*Specifically, for investors and competent authorities, please provide an assessment whether the current reporting and disclosure obligations are fit for the purpose of public oversight and ensuring transparency. If applicable, please provide specific examples of missing reporting or disclosure obligations or existing obligations without clear added value.*

### Example 1 for Issue 6 | Duplicative disclosure requirements

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Article 185, paragraph 2, point (a), Article 185, paragraph 3, point (b), Article 185, paragraph 3, point (l) of Solvency II Directive.

- Article 8, paragraph 3, point (a), Article 8, paragraph 3, point (c), sub-point (v), Article 8, paragraph 3, point (f), Article 8, paragraph 3, point (h) of PRIIPs Regulation.
- Articles 27, Article 30, Article 31, Article 32 and Article 32 of MiFID.
- Article 12 of IMD 1.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

There are a number of parallel and equivalent disclosure requirements under different pieces of EU financial services legislation, which ultimately apply to an individual sales process. This plethora of reporting and disclosure requirements does not necessarily make the information more accessible for consumers.

There is on the one hand, duplication between the PRIIPs Regulation and the Solvency II Directive with the cumulative disclosure of identical or very similar pre-contractual information and on the other hand, duplication between the PRIIPs Regulation and the Insurance Distribution Directive both including information requirements in relation to disclosure of costs and charges.

Based on the findings outlined in Insurance Europe's note 'Stocktaking and challenges of the EU financial services legislation', currently a consumer purchasing an insurance-based investment product online from a broker must be provided with 75 different pieces of pre-contractual information under existing EU legislation. With the new PRIIPs Regulation, Solvency II Directive and Insurance Distribution Directive, consumers will end up being provided with 147 different pieces of pre-contractual information.

When broken down into its component parts, the number of pre-contractual product disclosures will increase from 20 under the Life Insurance Directive, to 66 under the Solvency II Directive and the PRIIPs Regulation, representing a 330% increase, while disclosure requirements for sales rules would rise from 9 under IMD 1 to 35 under IDD, representing an increase of 338%.

Duplicative requirements concern the following areas: advice, conflict of interest, disclosure of costs and disclosure of other similar information. For example, under Solvency II and the PRIIPs Regulation, there are requirements to disclose equivalent information, such as:

- the insurer's identity (Article 185, paragraph 2, point (a) of the Solvency II Directive and Article 8, paragraph 3, point (a) of PRIIPs Regulation),
- the duration of the contract (Article 185, paragraph 3, point (b) and Article 8, paragraph 3, point (c), sub-point (v) of PRIIPs Regulation) and
- the existence of arrangements for handling complaints (Article 185, paragraph 3, point (l) of Solvency II Directive and Article 8, paragraph 3, point (h) of PRIIPs Regulation).

Another example of such duplication of equivalent requirements concerns the disclosure of costs of the product under MiFID and IDD, as well as the PRIIPs Regulation (Articles 27, 30, 31, 32 and 33 of MiFID, Article 12 of IMD and Article 8, paragraph 3, point (f) of PRIIPs Regulation).

On the basis of the above considerations, it is likely that the information will be provided to consumers in different format in accordance with the different pieces of EU legislation applicable. This would lead to an overload of information, as well as contradict the objectives to provide consumers with accurate, fair, clear and not misleading information.

Excessively detailed pre-contractual information would be confusing for consumers, offering them little or no benefit, and would distract them from paying attention to important information, such as insurance coverage and exclusions. Therefore, the multiplicity and complexity of customer information might not ultimately serve real customer needs.

Furthermore, the disclosure requirements are often foreseen to provide relevant information to investors. These requirements are irrelevant for mutual and cooperative insurers which do not have shareholders.

Reference documents:

- Insurance Europe, 'Stocktaking and challenges of the EU financial services legislation'
- European Parliament resolution of 19 January 2016 on stocktaking and challenges of the EU Financial Services Regulation

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

The objective should be to develop EU rules that avoid duplication and overload for the benefit of consumers and insurers alike. The focus of regulation should ensure that consumers are provided with information that is of a high quality and relevant, rather than just a high quantity of information.

As outlined in the recently adopted European Parliament resolution of 19 January 2016 on stocktaking and challenges of the EU Financial Services Regulation, AMICE members share the views that consumer protection does not necessarily entail large volumes of information and the focus should rather be on the quality and comprehensibility of information enabling proper decision-making. There should be a correct balance between providing consumers with the information they need to make informed choices and to understand the risks involved, without necessarily over-burdening businesses, especially SMEs.

### Example 2 for Issue 6 | Proposed Reporting Templates put a heavy burden on the undertakings

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC) - Article 35(1) and (2) for solo entities (Article 254 for Groups).
- Solvency II Regulation (2015/35) – (Solo) Article 304 Elements of the regular supervisory reporting / (Groups) Article 372 Elements and contents.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

The proposed reporting templates put a heavy burden on the undertakings. The costs are not only the immediate ones for changing IT-systems etc., there will also be a permanent increase in costs for reporting because additional human resources will be required in all company functions involved in reporting. The drivers for this additional need of resources are:

- the rather large amount of data that needs to be collected (from different systems/departments),
- the necessary controlling of the templates, and
- the governance involved at all levels, including the development, documentation and maintenance of policies and procedures.

The cost to the undertakings, and thus for policyholders, which will be substantial, will outweigh any benefits for supervisors and society.

The issue is not that undertakings do not have the required information. The required information is in almost all cases available and even structured and processed in existing management reporting systems. The burden results from the obligation to collate the information in the predefined reporting templates, which many companies do not and would never use for the management of risks etc. because they have their own tailor-made solutions. Therefore, the reporting of information to supervisors in the predefined templates will in most cases be an extra burden on companies. In the end, it will be the policyholders who will be penalised with the extra costs.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

It is paramount that EIOPA develops simplifications to the current reporting templates.

### Example 3 for Issue 6 | EIOPA taxonomy releases

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC) - Article 35(1) and (2) for solo entities (Article 254 for groups).
- Solvency II Regulation (2015/35) - Article 304 (Article 372 for groups).
- Reporting formats: EIOPA DPM, XBRL and Validations.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

A decision was taken to implement XBRL as the standard for reporting submissions within EIOPA. EIOPA only made the final taxonomy available in October 2015. It is crucial for the insurance industry that EIOPA makes public how the future development of technical and business validation rules, the new versions of taxonomy and of data collection process will be worked out. In particular, the frequency of the review of the taxonomy should be minimized as much as possible.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

We welcome EIOPA's initiative to introduce the process for defining new sets of validations for EIOPA's taxonomies (creation of new business validations, creation or modification of

new technical validations, correction of mistakes or deactivation of validations).

At least a period of 1 year is necessary between the delivery of the new taxonomy version and its implementation to allow firms enough lead time. The taxonomy should not change over the year.

## Issue 7 | Contractual documentation

*Standardised documentation is often necessary to ensure that market participants are subject to the same set of rules throughout the EU in order to facilitate the cross-border provision of services and ensure free movement of capital. When rules change, clients and counterparties are often faced with new contractual documentation. This may add costs and might not always provide greater customer/ investor protection. Please identify specific situations where contractual or regulatory documents need to be updated with unnecessary frequency or are required to contain information that does not adequately meet the objectives above. Please indicate where digitalisation and digital standards could help to simplify and make contractual documentation less costly, and, if applicable, identify any obstacles to this happening.*

### Example 1 for Issue 7 | European Insurance Contract Law

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

A Commission Expert Group on a European Insurance Contract Law was established in 2013 to examine barriers to cross-border trade in insurance law across Member States and to develop a European insurance contract optional to national contracts. The working group did not complete the single contract at this stage. One can question the need for a standardised insurance contract.

Under French law, some clauses are mandatory in an insurance contract but the drafting of the contract is not subject to any specific rules. It does not seem to appear impossible for customers to compare contracts. Having a single contract without flexibility would distinguish insurance companies only on price terms. We also note that in some countries mutual insurance contracts do not have the same scope as their joint-stock company counterparts, i.e. the former include a number of provisions in their by-laws, which would be contractual for joint-stock companies. Moreover, some mutual insurers distinguish between the member status and the insurance contract.

## Issue 9 | Barriers to entry

*Please document barriers to market entry arising from regulation that the EU should help address. Have the new rules given rise to any new barriers to entry for new market players to challenge incumbents or address hitherto unmet customer needs?*

### Example 1 for Issue 9 |

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Cross-border mergers Directive.

- Solvency II Directive.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

A main barrier to entry is the high capital requirements for any new insurance company which pose a particular problem for the creation of a mutual insurance company which cannot raise money on capital markets. This could lead to a lack of cover for some emerging or niche needs.

One of the barriers to market entry to tackle is the challenge for mutual insurers to expand their activities across borders in the EU.

While the establishment of branches and the provision of cross-border services are open to them, other single market instruments are not available or only available to a limited extent, such as cross-border mergers and the formation of cross-border mutual groups.

The 2012 European Commission “Study on the current situation and prospects of mutuals in Europe” identified single market barriers for mutuals, among them restricted opportunities for cross-border development. For instance, forming groups between mutuals is only possible in a few countries; cross-border mergers seem, in many cases, impossible or, if they are possible, procedures are extremely complicated.

Reviving the Commission project for a European legal framework for mutual companies could provide an opportunity for addressing such barriers.

For further details, see our comments under Issue 13.

Furthermore, Solvency II creates inequalities between Europe and the rest of the world that is not subject to the same capital requirements, facilitating acquisitions in the insurance sector by US or Chinese insurance companies.

Literature reference: European Commission, Study on the current situation and prospects of mutuals in Europe, 2012

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

AMICE calls upon the European Commission to ensure the possibility for company forms, other than joint-stock companies, to merge (or divide) cross-border.

### Example 2 for Issue 9 | MCR Absolute Threshold

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC) - Article 129 paragraph 1(d), points (i).

*\* Please provide us with an executive/succinct summary of your example:*

The absolute floor of the minimum capital requirement imposes a minimum level of funds unnecessarily high for small non-life undertakings with a risk profile that is low in terms of nature, scale and complexity.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

Non-life undertakings offering short-term business and whose premiums lie between Euro 5 and 10 million, normally hold sufficient eligible basic own funds to cover a minimum capital requirement determined by the method in article 129(2). However, their small size and low risk exposure makes their calculated minimum capital requirement much lower than the absolute floor of Euro 2.5 million. As a consequence of the absolute floor requirement, some firms are required to raise a huge amount of own funds in a short period of time.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

A transitional solution is needed whereby firms are allowed to find the capital needed over a reasonable period of time. The Delegated Acts could allow for some flexibility by allowing the non-application of the absolute floor provided this is appropriate with regard to the nature, scale and complexity of the risks of the firms. Article 253 could be the place to address this issue.

## C. Interactions of individual rules, inconsistencies and gaps

### Issue 10 | Links between individual rules and overall cumulative impact

*Given the interconnections within the financial sector, it is important to understand whether the rules on banking, insurance, asset management and other areas are interacting as intended. Please identify and explain why interactions may give rise to unintended consequences that should be taken into account in the review process. Please provide an assessment of their cumulative impact. Please consider whether changes in the sectoral rules have affected the relevancy or effectiveness of the cross-sectoral rules (for example with regard to financial conglomerates). Please explain in what way and provide concrete examples.*

#### Example 1 for Issue 10 | EIOPA Guidelines on Product Oversight and Governance Arrangements and Cross-selling Practices

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Insurance Distribution Directive.
- EIOPA Guidelines on cross-selling practices.
- EIOPA Guidelines on product oversight and governance arrangements by insurance undertakings.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

See our response to Issue 3 on Investor and Consumer Protection and Issue 6 on Reporting and Disclosure obligation.

We share the concern of the industry and members of the ECON Committee of the European Parliament about EIOPA's activities in the area of guidelines and emphasise that guidelines must not amount to quasi-legislation.

We note a tendency for EIOPA guidelines to take the form of detailed, prescriptive rules, constituting a third-level rulebook. All commitments towards proportionality and principles-based regulation seem threatened by this activity.

For example, in the field of cross-selling practices, AMICE recognises the difficulties of trying to harmonise measures at level 3 when the relevant rules are not harmonised at level 1. It is important to have a coherent approach and avoid going beyond the scope and requirements of the relevant primary legislation. A number of issues that are addressed in the proposed EIOPA guidelines are not only relevant in the context of cross-selling, i.e. disclosure, training and remuneration, but are also relevant to the sale of all insurance products. It is also worth highlighting the need for these guidelines to be fully aligned and consistent with IDD, which has been recently adopted by the European Parliament and so is yet to be endorsed by Member States and published in the Official Journal of the EU, as each and every change to the legal regime causes additional costs to companies, which may ultimately end up being passed on to consumers.

AMICE members have similar concerns about the timing between the adoptions of the guidelines and delegated acts on product oversight and governance arrangements by insurance undertakings. There is a risk of inconsistencies between guidelines and level 2 measures. The work on level 3 measures has started without first finishing the work at level 2.

## Issue 12 | Overlaps, duplications and inconsistencies

*Please indicate specific areas of financial services legislation where there are overlapping, duplicative or inconsistent requirements.*

### Example 1 for Issue 12 | Overlaps between disclosure requirements under PRIIPs and UCITSs

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- PRIIPs Regulation.
- Regulation (EU) No 583/2010 of 1 July 2010 01/07/2010 on KIIDs for UCITSs.

*\* Please provide us with an executive/succinct summary of your example:*

AMICE urges the Commission to assess the cumulative impact of the number of, and duplication of, disclosure requirements for retail investment products, and to take the necessary steps to address them. For further details, please see our comments under Issue 6.

Consumer protection is a key objective of EU financial services legislation and supervision. Broadly speaking, consumer protection per se is not a contentious issue because it can improve market efficiency as well as social justice; but the nature and extent of consumer protection is contentious because of the potential compliance burden and competitive inequality involved.

Duplication and inconsistencies in EU regulation should be avoided because they can:

- cause customer confusion in that the customer can be overloaded with information, resulting in uncertainty;
- impose additional compliance costs (which in part at least will be passed on to consumers);
- result in double jeopardy, or at least unequal enforcement; and
- create competitive inequality, i.e. the uneven distribution of the regulatory burden may unfairly favour one industry over another.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

AMICE members call for a simplification of the conditions for implementing the PRIIPs Regulation with regards to life insurance policies made up of unit-linked funds/UCITs. When life insurance policies are policies made up almost exclusively of unit-linked funds/UCITs, they fall within the category of "products offering multiple investment options" or "MOPs" within the PRIIPs Regulation.

In accordance with the ESAs' draft Regulatory Technical Standards on Key Information Document (KID) for PRIIPs, insurers must provide the following documents before a "MOPs" type life insurance policy can be entered into:

- a "generic" KID, showing the characteristics of the life insurance policy and the range of possible investment options;
- one or more information document(s) separate from the "generic" KID, specifying the risk indicator, the 3 performance scenarios and the cost indicators for each fund.

This pre-contractual information will be in addition to:

- the Key Investor Information Document (KIID) for each unit/UCITS selected by the policyholder in accordance with Commission Regulation (EU) No 583/2010 of 1 July 2010 01/07/2010 on KIIDs for UCITs; and
- information notice (or note) for the life insurance policy as required under Directive 2009/138/EC known as Solvency 2.

The overlapping of all of the disclosure requirements described above poses a real problem of application for insurance undertakings and is proving to go against the principles of the PRIIPs Regulation.

For "MOP" type policies, policyholders are likely to receive hundreds of pages of pre-contractual information documents, which goes against the objectives of transparency and comparability of information sought by the European authorities.

The implementation of the legislation would create a distortion of competition between the different methods of distribution of the UCITs (financial intermediaries or life insurers) to the detriment of insurance undertakings, which goes against the principle of free competition.

Life insurers selling policies made up of UCITS unit-linked funds will be obliged to provide KIDs from 31 December 2016 in accordance with the PRIIPs regulation. And yet, in accordance with Article 32 of PRIIPs Regulation, management companies that produce UCITs and those that sell them directly are exempt from the obligations of the PRIIPs

Regulation and therefore from the obligation to provide a KID until 31 December 2019.

Life insurers will be responsible for drawing up the KID for the unit-linked funds/UCITSs, the characteristics of which are only known by the management company, which goes against the objectives of transparency of financial information. It is inconceivable to give insurance companies the responsibility of drawing up a document based on information provided by third parties, even though all relevant information must however be provided to the client.

Finally, contrary to the rules of transparency and harmonisation of the EU legislation, clients will be provided with differentiated information, with those who invest directly in UCITSs being provided with a KIID and those who invest in the same type of products via a multi-fund life insurance policy being provided with a KID, a KIID and an information notice. The KIID provides information on the past performance of the UCITS, whereas the KID provides 3 future performance scenarios. The KIID only states the expenses of the UCITS, whereas the KID provides, for the same product, information about the direct and indirect costs and the total aggregate cost for the PRIIPs.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

In view of the aforementioned inconsistencies, we urge the ESAs to rationalise the life insurance pre-contractual information for "MOP" type policies by providing clients for unit-linked funds/UCITSs, until 31 December 2019, with the KIIDs of the UCITSs instead of the KIDs (or separate information documents) laid down by the PRIIPs Regulation.

### Example 2 for Issue 12 | Credit Rating Agencies

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Omnibus II Directive (2014/51/EU)
  - Article 13 (40) Definitions;
  - Article 109 (a) Harmonised technical inputs to standard formula;
  - Article 111 (n) Delegated acts and regulatory and implementing technical standards concerning Articles 103 to 109.
- Solvency II Directive (2009/138/EC) – Article 44 4(a) Risk Management.
- Solvency II Delegated Acts (2015/35) – Article 4 General requirements on the use of credit assessments.

See also comments of Example 3 of Issue 5.

*\* Please provide us with an executive/succinct summary of your example:*

Solvency II defines “*external credit assessment institution*” or “*ECAI*” as a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council or a central bank issuing credit ratings which is exempt from the application of that Regulation.

Recital 2 of the Delegated Regulation states that in order to reduce overreliance on external ratings, insurance and reinsurance undertakings should aim at having their own credit assessment on all their exposures. However, in view of the proportionality principle,

insurance and reinsurance undertakings should only be required to have own credit assessments on their larger or more complex exposures.

The Commission, in its Impact Assessment on the Delegated Act wrote that:

*“Given that their primary business is to underwrite insurance risk, insurers and reinsurers (particularly non-life insurers) do not have the same expertise and information to assess credit risk as banks do. Therefore, it would be disproportionate to require users of the standard formula to develop their own internal credit assessments for all their investment and reinsurance exposures, particularly since the standard formula users tend to be the smaller and less complex undertakings. Lastly, one of the goals of Solvency II is to ensure harmonisation of prudential regulation across the EU, which requires a uniform approach to measuring credit risk. Therefore, the Commission considers that the limited reliance on external credit ratings from CRAs that is embedded in the Delegated Acts in the areas described above is justified. In addition, a number of safeguard to aver mechanistic reliance on CRAs have been included, in the Directive and in the Delegated Acts.”*

The Solvency Capital Requirement (Standard Formula) calculation relies heavily on ratings. The Standard Formula in Solvency II uses ratings (ECAIs) from rating agencies as the main driver for spread risk, concentration risk and counterparty default risk. If an insurer does not have a rating or if an insurer has no information, the capital requirement will be one of the highest (sometimes non-rated is put at odds with a “junk status”).

In preparing the legislation the industry put forward proposals to use “solvency information” from regulated financial counterparties (banks and insurers). This is included in the Solvency II legislation. However, the rating agency information has preference over the other information.

The industry, on an individual basis, has taken actions to reduce reliance on rating agencies for internal purposes. However, the capital requirements in Solvency II are still based on ratings. The only manner to avoid the use of ratings from rating agencies is to develop an internal model and to have an own model as an alternative for ratings. And because of the administrative burdens and the needs for extensive resources, this is only a possibility for the very big insurance companies or insurance groups.

We presume that it cannot have been the intention of the Commission and co-legislators to develop a captive market for ECAIs via a regulatory requirement.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

The Solvency II Directive allows for the undertaking’s own internal credit assessments for all their investment and reinsurance exposures but only as part of a (partial) internal model. This alternative is only used by large firms because the development needs extensive use of resources (knowledge, IT systems, and people). The development of these systems is therefore not widely used and it cannot be seen as an alternative to the ratings from rating agencies.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

The Solvency II Directive only allows the use of external credit assessments or own internal assessments.

For financial counterparties such as banks and insurers, the use of publicly disclosed solvency information could be used as an alternative for rating information. The Solvency II Delegated regulation already provides for use of this information in deriving the probability of default. However, if a rating is available this should be used rather than the solvency information. The advantage of using Solvency II information is that not only credit information but the resilience to all identified risks are assessed. An insurer can assess a broader range of risks affecting the counterparty.

The reliance on credit rating agencies should be re-examined in the review of the Solvency II Directive.

### Example 3 for Issue 12 | Diverging National Implementation of Solvency II

*\* To which Directive(s) and/or Regulation(s) do you refer in your example?*

- Solvency II Directive (2009/138/EC).
- Solvency II Delegated Acts (2015/35).
- Implementing Technical Standards and EIOPA Guidelines.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

The application of Solvency II as of 1 January 2016 marks a major step forward in harmonising European insurance regulation. However, diverging national interpretations could endanger the level playing field among insurance companies in Europe.

#### Look-through

Look-through - Article. 84 (4) of the Delegated Acts - is an example of how the single rule book creates an un-level playing field among insurance companies across different jurisdictions because the Solvency II requirements do not work in conjunction with each Member State's specific legislation, e.g. tax laws, company laws etc.

In Belgium insurance companies organise their investments to back their liabilities through the use of investment subsidiaries according to article 212(b). According to article 84(4) of the Delegated Acts the look-through cannot be applied to related undertakings. As a result, those companies are required to treat the investments as a participation and apply the equity risk and concentration risk sub-module.

#### Independent responsible actuary

In Portugal, insurance companies are being required to have an “*Independent Responsible Actuary*” in addition to the Actuarial Function whose tasks include, according to the law that transposed Solvency II, a certification (Actuarial Opinion) on the appropriateness of the technical provisions and related SCR calculations.

Even though it is not required to resort to external experts, the Independent Responsible Actuary should be independent from the actuarial function, operational functions and should not hold any of other functions that might generate conflicts of interests with the “responsible actuary” functions.

#### Deferred taxes

*Future profits for the demonstration of the recoverability of deferred tax assets should not be overlooked and their loss absorbing capacity should not be capped as they are key to*

*achieving a global consistency of the values in Pillar I and to reflect the arrangements under the tax legislation in the different Member States.*

According to the statutory accounting standards, firms can recognise deferred tax assets (DTA) on the Solvency II balance sheet, thus increasing own funds, and reflect the tax effects of the 1-in-200 shock when calculating the SCR (known as the loss-absorbing capacity of deferred taxes) thus lowering their SCR. A firm can recognise deferred tax assets if it can offset DTA arising from temporary timing differences against a deferred tax liability (DTL) arising from temporary timing differences, to the extent that the temporary difference related to the DTL is expected to reverse in the same period as the DTA, or in periods to which the tax loss can be carried back or forward or develop forward projections to demonstrate that it will earn future taxable profits against which the DTA can be set in future.

National supervisory authorities are taking different approaches regarding the amount of deferred taxes that are considered loss-absorbent for the calculation of the SCR. Some authorities are imposing a cap contrary to the provisions in the Delegated Act (i.e. undertakings should demonstrate that they will earn enough future profits to be offset by the net deferred tax assets for these to be eligible as loss absorbent). These caps might be driven by a national market situation for instance where the current situation is not favourable to the recognition of future profits. But these national choices should not overrule what it is stated in the Delegated Regulation and pre-empt the proper recognition of the loss absorbing capacity of deferred taxes which is consistent with the prudential balance sheet and the going-concern approach. These caps introduce pro-cyclicality in addition to wrongly assessing the real values of losses and causing an undue erratic SCR behaviour.

Lack of harmonisation increases the cost of regulation, distorts competition between countries and companies and results in higher costs for policyholders. In particular, mutual companies could be more heavily penalised because of their size and structure.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

We call on EIOPA to continuously monitor the implementation of Solvency II at national level so that a level playing field among Member States can be ensured.

#### Example 4 for Issue 12 | IORPs

*\* To which Directive(s) and/or Regulation(s) do you refer in your example?*

- IORP Directive 2003/41/EC - Article 4.
- Solvency II Directive (2009/138/EC) – Recital 138.
- Omnibus II Directive (2014/51/EU) – Recital 62, Article 308b (15) Transitional Measures.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

In the EU, products providing supplementary retirement benefits are subject to different supervisory treatments depending on their country and classification:

- Products with supplementary individually underwritten retirement coverage are

excluded from the scope of application of Directive 2003/41/EC, the so-called IORP Directive, which only deals with occupational retirement schemes.

- Article 4 of the IORP Directive allows EU member states who so wish to authorise occupational retirement schemes outside the life insurance marketplace, particularly in the context of management by pension funds. This option has most often been used by countries that traditionally have funded retirement schemes, such as the United Kingdom and the Netherlands. France for example, because its model has a strong focus on life insurance products, has not made use of this option and supplementary retirement benefits, regardless of the classification, are prudentially supervised under Solvency II.

While a request for advice on the review of the IORP Directive was sent to EIOPA in 2011, it is obvious that the results of the QIS published in the spring of 2013 cannot, in the words of EIOPA itself, be used for a supervisory regime and that a lot more work needs to be done. In May 2013, European Commissioner Michel Barnier declared that IORP II would focus on governance and transparency and that Pillar 1 would be the subject of an additional impact study and would, where required, be revised. In the meantime, entities subject to the IORP Directive would benefit, under Pillar 1, from the supervisory framework of Solvency I, which is much less onerous in the area of capital requirements than Solvency II.

While all products offering supplementary retirement benefits contain non-redeemable annuity commitments, we have seen that in the European Union, the rules, in particular prudential rules, are very different between products that are individually and occupationally underwritten and between those subject to IORP versus Solvency II, with a potentially very big impact on price, on the performance of the offer and even on the product's security. The result is an unacceptable de facto distortion, particularly between the employee populations and other categories.

There should be common rules for retirement commitments that are the same, regardless of the provider and the type of coverage. In this regard, the Solvency II supervisory regime as it applies to long-term guarantees and more particularly to supplementary retirement benefits, is poorly adapted because it is founded on a short-term approach to risk assessment for an activity requiring an assessment with a long-term vision, for associated risks arising from commitments to insured parties and risks arising from asset management. The work done by EIOPA in the context of the IORP QISs has revealed this inadequacy. Efforts made to minimise the impact of this choice, especially via the Omnibus 2 Directive, have not remedied the model's original flaw.

More particularly, the logic of the one-year VaR that is the basis of the Pillar 1 model under Solvency II is poorly adapted to the risk management and control of the retirement business. Without calling into question the general prudential regulatory requirements, the rules should be changed so that the entities' risk management is challenged on the basis of adjusted criteria.

The primary consequence is greater volatility in the prudential balance sheet and in capital requirements. The model's aberration causes short term volatility, unrelated to the company's ability to meet its commitments on the short and medium terms, which prevents an adequate assessment risk and can even lead to decisions that may eventually be counter-productive to the policyholders. One example is the realisation of gains to meet a theoretical and short-term solvency requirement, to the detriment of medium-term performance. Such gains may impact the value of the annuity payments or even the cost of establishing the annuity.

For a specialised player which has no possibility of diversifying, the impact of the rules under Solvency II on capital requirements raises the following two issues:

- The level of requirements at a given moment compared to the Solvency I regime;
- The inconsistency of that level generated by the model owing to the incompatibility of the one-year VaR with the management of the retirement product and the resulting volatility of the requirement's measurement.

The entry into force on 1 January 2016, which requires an assessment of the prudential situation on that basis, seems inappropriate for these pension products, while at the same time:

- The IORP Directive and Pillar 1 will be going through a transitional period until 2019.
- The Omnibus 2 Directive contains a review clause that provides for a rethinking of the means for calculating capital requirements for the long-term guarantees in general and pensions in particular.

For insurance companies active in pension products, heavy investment will be required in supplementary capital requirements and in product development in order to meet the requirements of a prudential regime whose review could fundamentally alter the requirements.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

It would be more appropriate to take account of a longer risk horizon, in the assessment and control of risks, in the absence of immediate risk of failure, with a view to boosting effectiveness and raising the profile of management measures that tie in with the management of a retirement portfolio.

AMICE requests the extension until 2022 of the transitional period for those insurers subject to article 4 of the IORP Directive.

### Example 5 for Issue 12 | Inconsistencies in the Solvency II Delegated Regulation

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Delegated Regulation (2015/35/EC) Different articles (see below).

*\* Please provide us with an executive/succinct summary of your example:*

#### Volume measure for non-life premium and reserve risk module

Solvency II Delegated Regulation (2015/35/EC).

- Recital 43.
- Article 116 – Volume measure for non-life premium and reserve risk module.
- Article 147 – Volume measure for NSLT health premium and reserve risk.

The volume measure for non-life premiums should capture one-year of earned premiums together with all future premiums falling within the boundaries of existing contracts and contracts with an initial recognition date falling in the following 12 months. The definition of  $V_{\text{prem},s}$  is creating implementation problems due to an incomplete definition of the scope, a risk of double counting some premiums as well as the risk of unduly excluding premiums

falling within the scope.

Article 116 and Article 147 should be amended to include some reference to the “boundaries of the contract” in the definition of FP<sub>existing</sub> and FP<sub>future</sub>.

#### USPs at solo level and group level

Solvency II Delegated Acts (2015/35) Article 218 to 220 – Undertaking Specific Parameters.

Implementing Regulation (EU) 2015/498 – Undertaking Specific Parameters.

The use of USPs at group level would require the approval of the group supervisor even in the case that USPs had been approved by the solo supervisor.

#### Example:

A group insurance company consolidates under Method 1. Solo company 1 operates General Liability, Fire and Assistance. Solo company 2 operates General Liability and Fire (but not Assistance). According to EIOPA, Group specific parameters (GSP) have to be calculated with the data coming from the balance sheet of the group, consolidated according to method 1 (the accounting-consolidated method). As the GSP have to be approved by the group supervisor, there needs to be an application, even in the case where USP were already approved at solo level.

USPs having being approved by the Solo Supervisor should not require a full approval by the Group Supervisor.

#### Risk margin at group level

Solvency II Delegated Acts (2015/35) Article 340 – Method 1: Risk Margin.

EIOPA Group Solvency II Guidelines.

Article 340 of the Delegated Regulation indicates that the consolidated risk margin should be calculated based on “consolidated data”. According to the Regulation, intra-group transactions are eliminated from the “consolidated data”. However, EIOPA has explained that for the calculation of the group loss absorbing capacity of deferred taxes (LAC DT) the formula in the EIOPA guidelines is to be interpreted gross of intra-group transactions. EIOPA has stated similarly in their response to a question on the risk margin and the MCR calculation; that the consolidated risk margin should be calculated as the simple sum of the risk margin of the participating undertaking and the proportional shares of the risk margin of related undertakings, which means it should be gross of intra-group transactions. This interpretation seems to indicate that intra-group transactions are similar to diversification effects.

Not eliminating the intra-group transactions from the group calculations for the risk margin would imply that the Group will have a risk margin which is not related to the best estimate on the balance sheet.

## Issue 13 | Gaps

*While the recently adopted financial legislation has addressed the most pressing issues identified following the financial crisis, it is also important to consider whether they are any significant regulatory gaps. Please indicate to what extent the existing rules have met their objectives and identify any remaining gaps that should be addressed.*

### Example 1 for Issue 13 | Legal framework for mutuals

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

Mutual insurers play an important role in the EU insurance market with more than half the number of insurance companies and almost 30% market share.

Nevertheless, mutuals face various administrative and legal difficulties in Europe when they wish to engage in activities across borders or to create groups of undertakings or simply to use/apply EU legislation, which does not necessarily take into account their specificities.

The main legal barrier to mutuals engaging in cross-border activities is Member States where the creation or operation of mutuals is not foreseen, or where the Member States restrict the practice of certain insurance activities. Despite the provisions of the Treaty on the freedom of establishment and the free provision of services (Article 49 to 55 of TFEU and Articles 56 to 62 of TFEU), mutuals have difficulties in operating in those countries restricting their mutualistic principles. It is not obvious how in practice mutuals can benefit from these freedoms. The lack of transparency on the application of these two fundamental freedoms causes practical obstacles for mutuals when expanding across borders.

The lack of legal recognition of mutuals in EU legislation raises a level playing field issue vis-à-vis public limited companies or cooperatives which operate in the same fields, but do not face the same limitations since they are mentioned in the EU Treaties and have European Statutes. In this regard, we must recall the inadequacy of these existing legal instruments for mutuals: the European Cooperative Society – it provides for the existence of a share capital, which mutuals do not have; and the European Company plc – it is a capital based profit driven company which is not compatible with the operation of mutuals.

Difficulties to form mutual groups are also present at the EU level. In a number of countries such difficulties are properly addressed via national laws (e.g. in France or Germany), nevertheless such national solutions do not acknowledge the issue of cross-border groups.

The general lack of understanding of the specificities of mutuals, of their governance or financing, for example, means that European legislation, are not always designed with mutuals in mind. This lack of understanding also constitutes an important obstacle to the promotion of mutuality across the EU.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

For the abovementioned reasons, the mutual business model should not only be maintained but also extended and encouraged across the EU. A European legal framework that recognises mutual insurers would create equal opportunities providing them with the same instruments and opportunities as other social and economic organisational structures.

The legal recognition of mutuals is of particular importance for several reasons:

- Allow recognition of the specific features of this form of enterprise, as well as their considerable economic weight in the EU countries where they are present.
- Increase awareness of the functioning and the activities of mutuals in the Member States, especially in those where mutuals do not exist.
- Establish a level playing field that provides mutuals with opportunities equivalent to those available to other organisational legal structures. Otherwise, the weight of

mutuals in the European economy could decrease, since they would not have the opportunity to develop under their legal form. This would contravene the EU Treaties' rules on free provision of services and freedom of establishment.

- Enable the development of cross-border cooperation between European mutuals via a legal structure and functioning respectful of mutual principles, thereby giving a European dimension to their organisation and activities.
- Allow the sector to consolidate/regroup without giving up its mutual status through the creation of a European Mutual Group. National solutions seem to be emerging in some European countries, for example the French grouping of mutuals (SGAMs) whose aim is to organise cooperation between a groups of mutuals with the degree of integration decided by the founders.

### Example 2 for Issue 13 | 5 million Threshold

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC) Article 4 – Exclusion from scope due to size.
- Solvency II Directive (2009/138/EC) Article 300 – Revision of amounts expressed in euro.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

The Solvency II Directive stated in its article 300 that the amounts expressed in Euro will have to be revised every five years starting from 31 October 2012. The Omnibus II Directive replaced 2012 with 2015, so the first revision would be in 2020. Some amounts (i.e. the floors on the MCR values) were updated with inflation whereas some others (i.e. exemption threshold €5 million) remained constant. This led to some firms being subject to Solvency II only as a result of an increase of premiums due to inflation.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

We request the Commission to review the €5 million threshold at least as regards inflation and to publish the new amounts in the Official Journal.

### Example 3 for Issue 13 | EIOPA Supervisory Handbook

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Directive (2009/138/EC) Article 36 – Supervisory Review Process.

*\* Please provide us with an executive/succinct summary of your example:*

EIOPA's main strategic focus for the upcoming years is to ensure supervisory convergence; Thus, EIOPA has delivered the Implementing Technical Standards and Guidelines covering most relevant areas of the Solvency II framework, it has introduced a Q&A process on the

legislation and it has strengthened the oversight activities of the overall supervisory process in the EU. EIOPA is also developing a Supervisory Handbook aiming at building up good supervisory practices across the different areas of Solvency II.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

EIOPA has announced that the Supervisory Handbook will not be public in contrast to other constituencies such as the US.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

EIOPA should publish its Supervisory Handbook to foster an adequate level of transparency and accountability from supervisory authorities.

## D. Rules giving rise to possible other unintended consequences

### Issue 14 | Risk

*EU rules have been put in place to reduce risk in the financial system and to discourage excessive risk-taking, without unduly dampening sustainable growth. However, this may have led to risk being shifted elsewhere within the financial system to avoid regulation or indeed the rules unintentionally may have led to less resilient financial institutions. Please indicate whether, how and why in your view such unintended consequences have emerged.*

#### Example 1 for Issue 14 | IASB Standards – IFRS4 for Mutual Companies

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Council Directive (E91/674/EEC) on the annual accounts and consolidated accounts of insurance undertakings.
- Regulation (EC) No 1606/2002 of the European Parliament and the Council of 19 July 2002 on the application of international accounting standards (IAS-Regulation No 1606/2002).

*\* Please provide us with an executive/succinct summary of your example:*

The EU has chosen to implement the IAS-regulation No 1606/2002 to improve the efficient functioning of the EU capital markets and the internal market.

The objective of adopting International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB) for use in the EU is to improve the efficient functioning of the EU capital markets and the internal market by harmonising the financial reporting of listed companies by ensuring a high degree of transparency and comparability. With IFRS becoming globally accepted EU companies would be able to compete on an equal footing for financial resources in the world capital markets. The protection of investors and the maintenance of confidence in the financial markets is also an important aspect of

the completion of the internal market.

IAS-Regulation No 1606/2002 contains an option in Article 5 to permit companies other than those whose securities are admitted to trading on a regulated market to prepare their consolidated accounts and/or their annual accounts in accordance with IFRS. This option is used in Member States for companies in the financial sector, including insurance companies. The consolidated accounts are prepared in accordance with IFRS, whereby the annual accounts are prepared in accordance with IFRS as far as possible with exceptions necessary regarding national legislation. This means that all insurance companies in some Member States apply IFRS regardless if they are listed or not.

The aim of IFRS is to bring transparency, accountability and efficiency to financial markets around the world, by enabling investors and other market participants to make informed economic decisions. Therefore, the IFRS is firstly aimed at listed companies, where investors would want to be able to evaluate their investment for example the possibilities of receiving a dividend. This view is not appropriate for mutual companies whose purpose is to meet the policyholders need for insurance, not to make profit for investors.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

The aim of IFRS does not fit with mutuals' primary purpose of meeting policyholders' needs, and does not take the characteristics of mutual companies (which can vary in different countries in the EU) into adequate consideration.

The draft standard "IFRS 4 phase II Insurance Contracts" should take into account the specificities of mutual companies. The policyholders in a mutual company are collectively entitled to all profits in the company. The surplus in a mutual company (part of the assets which exceeds liabilities that are guaranteed by the insurance company in the insurance contracts issued) should be accounted for as equity thus the consolidated accounts and the annual report can give a true and fair view of the company and the insurance contracts issued.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here.*

IFRS 4 phase II should take into account the diversity of the financial sector and the specificities of mutual companies in Europe. Mutual companies should not be adversely and unduly affected by developments in the accounting regulation. Mutual insurers play an important role as both providers of insurance cover to policyholders and investors in the capital markets for the assets that back the insurance liabilities, thereby contributing to the efficient functioning of capital markets.

The European Commission should pay duly consideration to these issues having an enormous impact in the mutual sector before endorsing IFRS 4.

### Example 2 for Issue 14 | Fairness Standard Formula and Internal Model Players

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- Solvency II Delegated Regulation (2015/35) – Article 181 Application of the spread

risk module scenarios to matching adjustment portfolios.

*\* Please provide us with an executive/succinct summary of your example:*

Allowing the use of the dynamic volatility adjustment in internal models will not provide a level-playing field in terms of Solvency II across insurers. The Solvency II Directive text states that a total balance sheet approach should be applied. This principle is not followed in the Delegated Acts as the spread risk module only refers to. However, this is foreseen in article 181 of the Delegated Acts for the matching adjustment.

A replication of this article for the volatility adjustment would allow standard formula players to apply the dynamic VA. The VA being a function of the levels of spreads, it is absolutely key that it should be updated simultaneously or consecutively when spreads are changing, which is what happens in the spread risk sub-module. The same treatment should be envisaged; otherwise internal model players would have a competitive advantage vis-à-vis the standard formula players.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

Article 181 should be amended so that the spread risk scenarios include simultaneous and consecutive volatility adjustment portfolios.

### Example 3 for Issue 14 | EIOPA Stress Test

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

EIOPA Stress Test.

*\* Please provide us with an executive/succinct summary of your example:*

EIOPA is planning to launch the third EU-wide stress test for insurers in the summer of 2016. The EIOPA Stress exercise 2016 will focus on two adverse scenarios, namely the prolonged low yield environment and the "double-hit" scenario and it is likely to be applied at solo level.

AMICE has previously raised its objections over EIOPA's decision to launch the Stress Test exercise during the first year of implementation of Solvency II in which the scope of the exercise will be extended to Small and Medium Size Companies.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

There should not be any stress test exercise in the first year (2016) of Solvency II. An education effort in terms of communicating the results of the stress tests is needed; the aim of the exercise at capturing vulnerabilities of the insurance sector at European level and not to be a pass/fail exercise should be clearly stated. Stress tests carried out by insurance companies should therefore not be compared to those applied to banks.

Firms should get an early indication from the corresponding regulators which companies are likely to be invited to participate in the stress test exercise and what timeline is to be used.

#### Example 4 for Issue 14 | Circumstances for imposing a capital add-on

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

Solvency II Directive (2009/138/EC) – Recital 27.

*\* Please provide us with an executive/succinct summary of your example:*

Recital 27 from the Solvency II Directive states that the imposition of a capital add-on is exceptional in the sense that it should be used only as a measure of last resort when other supervisory measures are ineffective or inappropriate.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

When the risk profile of the firm deviates significantly from the assumptions underlying the standard formula or from the assumptions underlying the matching adjustment, the volatility adjustment and the transitional or when the system of governance deviates from the standards as defined in the Directive, the supervisory authorities should engage a dialogue with the firms about the measures and actions the undertaking would put in place to solve the situation. Hence, the supervisory authorities should assess first whether other measures can be applied before imposing a capital add-on. Additionally, the criteria for imposing a capital add-on should be clearly stated and equally applied in all jurisdictions to ensure a level playing field.

#### Example 5 for Issue 14 | IASB Exposure draft on Applying IFRS9 with IFRS4

*\* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)*

- (ED/2015/11) ED Applying IFRS Financial Instruments with IFRS 4 Insurance Contracts.

*\* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)*

Paragraph 37A – (c) and (d) on the section on Disclosure in the Exposure Draft require additional disclosures. The ED requires firms to provide disclosures about the overlay approach and the temporary exemption from applying IFRS9. We do not see the need to request additional and distinct disclosures for the transitional period. We estimate that the information required by IFRS 7 is applicable and sufficient. We therefore require a deletion of these paragraphs from the Exposure draft.

*\* If you have suggestions to remedy the issue(s) raised in your example, please make them here:*

The following requirements set out in paragraph 37 c and d of the Exposure draft should be deleted altogether or very significantly reduced:

*c) the fair value at the end of the reporting period and the fair value change during the reporting period of financial assets that would be measured at fair value through profit or loss applying IFRS 9 because they do not meet the condition in paragraphs 4.1.2(b) and 4.1.2A(b) of that IFRS; and*

*d) information about the credit risk exposure, including significant credit risk concentrations, inherent in financial assets that would meet the condition in paragraphs 4.1.2(b) and 4.1.2A(b) of IFRS 9 and are not held for trading or managed on a fair value basis applying that Standard.*

*To enable users of financial statements to assess those risks, an entity shall disclose by credit risk rating grades the gross carrying amounts of those assets at the end of the reporting period*